

CLARK COUNTY BOARD OF COMMISSIONERS
ZONING / SUBDIVISIONS / LAND USE
AGENDA ITEM

Petitioner: Nancy A. Amundsen, Director, Department of Comprehensive Planning

Recommendation: ORD-21-900487: Introduce an ordinance to consider adoption of a Development Agreement with LAD 5 LLC for a residential development (Agate-Warbonnet) on 9.8 acres, generally located west of Buffalo Drive and south of Agate Avenue within Enterprise. JJ/ab (For possible action)

FISCAL IMPACT:

None by this action.

BACKGROUND:

The Board of County Commissioners (Board) approved a land use application NZC-20-0524 for a residential development (Agate-Warbonnet) on 9.8 acres, generally located west of Buffalo Drive and south of Agate Avenue within Enterprise. Conditions of approval included the developer and/or owner entering into a Development Agreement prior to any permits being issued in order to provide their fair-share contribution towards public infrastructure necessary to provide service in the southwest portion of the Las Vegas Valley.

In accordance with the provisions of Section 278.0203 of the Nevada Revised Statutes, a Development Agreement must be approved by ordinance.

Staff recommends the Board set a public hearing for October 6, 2021.

Cleared For Agenda
09/22/21

BILL NO. _____

SUMMARY - An ordinance to adopt the Development Agreement with LAD 5 LLC for a residential development (Agate-Warbonnet) on 9.8 acres, generally located west of Buffalo Drive and south of Agate Avenue within Enterprise.

ORDINANCE NO. _____
(of Clark County, Nevada)

AN ORDINANCE TO ADOPT THE DEVELOPMENT AGREEMENT WITH LAD 5 LLC FOR A RESIDENTIAL DEVELOPMENT (AGATE-WARBONNET) ON 9.8 ACRES, GENERALLY LOCATED WEST OF BUFFALO DRIVE AND SOUTH OF AGATE AVENUE WITHIN ENTERPRISE, AND PROVIDING FOR OTHER MATTERS PROPERLY RELATED THERETO.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CLARK, STATE OF NEVADA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. In accordance with the provisions of Section 278.0203 of the Nevada Revised Statutes and Chapter 30.20 of the Clark County Code, the Development Agreement with LAD 5 LLC for a residential development (Agate-Warbonnet) on 9.8 acres, generally located west of Buffalo Drive and south of Agate Avenue within Enterprise, is hereby adopted.

SECTION 2. If any section of this ordinance or portion thereof is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not invalidate the remaining parts of this ordinance.

SECTION 3. All ordinances, parts of ordinances, chapters, sections, subsections, clauses, phrases or sentences contained in the Clark County Code in conflict herewith are hereby repealed.

SECTION 4. This ordinance shall take effect and be in force from and after its passage and the publication thereof by title only, together with names of the County Commissioners voting for or against its passage, in a newspaper published in and having a general circulation in Clark County, Nevada, at least once a week for a period of two (2) weeks and shall be effective on and from the fifteenth day after passage.

PROPOSED on the _____ day of _____, 2021

INTRODUCED by: _____

PASSED on the _____ day of _____, 2021

VOTE:

AYES: _____

NAYS: _____

ABSTAINING:

ABSENT:

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY, NEVADA

By: _____
MARILYN K. KIRKPATRICK, Chair

ATTEST:

Lynn Marie Goya, County Clerk

This ordinance shall be in force and effect from and after the _____ day
of _____ 2021.

APN(s): **176-21501-030, 176-21-601-005, 022 and 023**

Please Return to: Joel McCulloch

Comprehensive Planning Department

1st Floor, Clark County Government Center

500 Grand Central Parkway

Las Vegas, Nevada 89155

DEVELOPMENT AGREEMENT

BETWEEN

THE COUNTY OF CLARK

AND

LAD 5 LLC

FOR

AGATE – WARBONNET

ORD-21-900487

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into by and between the *County of Clark, State of Nevada* (hereinafter referred to as the "County") and LAD 5 LLC the Owner of the real property described on Exhibit "A" attached hereto (hereinafter referred to as the "Owner") and incorporated herein by reference.

SECTION 1 – DEFINITIONS

1.01 Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings:

(a) "Agreement" has the meaning assigned to it in the first paragraph hereof. Agreement at any given time includes all addenda and exhibits incorporated by reference and all amendments, which have become effective as of such time.

(b) "Applicable Rules" means and refers to the following:

(i) The specific code, ordinances, rules, regulations and official policies of the County as adopted and in force at the time of permit issuance or map recordation and as amended from time to time, regarding planning, zoning, subdivisions, timing and phasing of development, permitted uses of the Subject Property, density, design, and improvement standards and specifications applicable to the Planned Community, including the Public Facilities Needs Assessment Report, and the fees incorporated herein, except that:

(1) The fees required in the County Code specifically for the Major Projects shall *not* apply to the Planned Community, unless and until the parties agree that the development of the Planned Community will be processed as a Major Project;

and

(2) The zoning established by the Concurrent Approvals will not be amended or modified during the term of this Agreement without Owner's prior written approval.

(c) "Best Efforts" means, in the case of any contingent obligation of County or Owner, that the party so obligated will make a good faith effort to accomplish the stated goal, task, project or promised performance, provided such term does not imply a legal obligation to take any specific action if:

(i) In the case of a County obligation, such action would, in the reasoned opinion of the County Commission, be imprudent given competing public needs and projects; or

(ii) In the case of an Owner obligation, such action would, in the reasoned opinion of the Owner, be commercially unreasonable.

In either case, upon request, the responsible party shall give written notice to the other party that it has considered such contingent obligation and the reason for its decision not to perform.

- (d) "Builder" means any person or entity, which constructs final improvements (other than off-site improvements or infrastructure) with respect to a subdivision or parcel of the Subject Property.
- (e) "CCRFCD" means the Clark County Regional Flood Control District.
- (f) "Code" means the Clark County Code, including all rules, regulations, standards, criteria, manuals and other references adopted herein.
- (g) "Concurrent Approvals" means the zoning, land use or map approvals and authorizations, relating to the subject property, together with the applicable conditions, as granted by the County Commission, including without limitation those approvals and conditions of approval per **NZC-20-0524**, the Agenda Sheet, Notice of Final Action and agenda map attached hereto as Exhibit "C" and incorporated herein by this reference.
- (h) "County" means the County of Clark, State of Nevada together with its successors and assigns.
- (i) "County Commission" means the Board of County Commissioners or Planning Commission of the County of Clark, State of Nevada.
- (j) "County Master Plan" means the comprehensive plan adopted by the County Commission in 1983 and all amendments thereto including, but not limited to, all adopted land use, development guides and elements, including the land use and development guide and the general plan map for unincorporated portions of the Las Vegas Valley adopted by the County Commission on January 24, 1974, except as amended by the adoption of more recent plans in effect as of the Effective Date.
- (k) "Development Agreement Ordinance" means Chapter 30.20 of the Clark County Unified Development Code (Title 30) along with any other Chapters of the Clark County Code that are relevant to this agreement.
- (l) "Effective Date" means the date, on or after the adoption by the County Commission, of an ordinance approving execution of this Agreement whereas the Agreement has been executed and signed by both parties, that this Agreement is recorded in the Office of the County Recorder of Clark County, Nevada.
- (m) "NDOT" means Nevada Department of Transportation.
- (n) "NRS" means Nevada Revised Statutes.
- (o) "PFNA" means the Southwest Las Vegas Valley Public Facilities Needs Assessment Report, dated December 1, 2000, incorporated herein by this reference and approved by the County Commission on January 2, 2001.
- (p) "Planned Community" means the Subject Property and the proposed development of the Subject Property described in this Agreement.
- (q) "Street Improvements" means public or private facilities that may include but are not limited to fire hydrants, sidewalks, curbs, gutters, pavement, gravel, aggregate base, streetlights, street name signs, traffic signals and signs, pavement markings, other applicable traffic control

devices, survey monuments, flood control and drainage facilities which are permitted within public rights-of-way as required by the County.

(r) "Subject Property" means that certain real property, which Owner owns or has the right to acquire, located in the County and more particularly described on Exhibit "A".

(s) "Term" means the term of this Agreement together with any extension agreed upon pursuant to Section 7.02 hereof.

SECTION 2 – RECITAL OF PREMISES, PURPOSE AND INTENT

2.01 Recitals. This Agreement is predicated upon the following facts and findings:

(a) Statutory Authorization. The County is authorized, pursuant to NRS §278.0201 through 278.0207, inclusive, to enter into binding Development Agreements with persons having a legal or equitable interest in real property to establish long range plans for the development of such property.

(b) Ownership Interest. Owner represents that it has, will acquire, or has the right to acquire, fee title ownership of the Subject Property.

(c) County Authorization, Hearing and Ordinance. All preliminary processing with regard to the Planned Community has been duly completed in conformance with all applicable laws, rules and regulations. The County Commission, having given notice as required by law, held a public hearing on Owner's application seeking approval of the form of this Agreement and the execution hereof by the County. At the described meeting, the County Commission found that this Agreement is consistent with the County's plans, policies and regulations, including the County Master Plan, that the Agreement meets the requirements of Title 30 of the Clark County Code, and that the execution hereof by and on behalf of the County is in the public interest and is lawful in all respects. During the same meeting at which the public hearing was held, the County Commission adopted the Ordinance approving this Agreement and authorizing the execution hereof by duly constituted officers of the County. Said ordinance was scheduled to be effective two weeks after adoption. County agrees to record a certified copy of the ordinance as required by NRS §278.0207.

(d) County Intent. The County desires to enter into this Agreement in conformity with the requirements of NRS, and as otherwise permitted by law, and this Agreement to provide for public services; public uses and urban infrastructure; to promote the health, safety and general welfare of the County and its inhabitants; to minimize uncertainty in planning for and securing orderly development of the Planned Community and surrounding areas; to insure attainment of the maximum efficient utilization of resources within the County at the least economic cost to its citizens; and to otherwise achieve the goals and purposes for which the State statute and County ordinance authorizing Development Agreements were enacted.

(e) Owner Intent. In accordance with the legislative intent evidenced by NRS §278.0201 through §278.0207, inclusive, authorizing Development Agreements and the intent of the County in adopting an ordinance allowing Development Agreements, Owner wishes to obtain reasonable assurances that Owner may develop the Planned Community in accordance with the conditions established in this Agreement. Owner acknowledges that there are insufficient public services, which includes facilities and infrastructure, existing or planned at this time. In order to develop the subject property, Owner is willing to enter into this Development Agreement in order to pay Owner's fair share of the costs to provide certain public services, facilities, and infrastructure in

the area of this Planned Community. Owner further acknowledges that this Agreement was made a part of the County Record at the time of its approval by the County Commission and that the Owner agrees without protest to the requirements, limitations, or conditions imposed by this Agreement and the Concurrent Approvals.

(f) Acknowledgment of Uncertainties. The parties acknowledge that circumstances beyond the control of either party could defeat their mutual intent that the Planned Community be developed in the manner contemplated by this Agreement. Among such circumstances is the unavailability of water or other limited natural resources, federal regulation of air and water quality, and similar conditions. Owner recognizes that water shortages could affect the County's ability to perform its obligations hereunder. Owner further acknowledges and agrees this Agreement does not relieve the Owner from compliance with existing, changed, modified or amended rules regulations, laws, ordinances, resolutions, fees codes, etc., of other governmental agencies. Such rules, regulations, laws, ordinances, resolutions, fees, codes, etc. of governmental entities must be complied with by the Owner and are not locked in nor a part of this Agreement. It is not the intent of the parties nor shall this Section be construed as excusing the County of any obligation hereunder or depriving Owner of any right under this Agreement, which can be performed.

(g) Provision of Water and Sewer Service. Owner clearly understands and agrees that, amongst other requirements, water commitment and sanitary sewer system development approval must be obtained from the proper governmental entities namely the Las Vegas Valley Water District and the Clark County Water Reclamation District. Fees and services for such commitments and systems are established by said governmental entities and must be paid and complied with by the Owner in accordance with said governmental entities requirements as amended from time to time. This Agreement or the County does not guarantee or provide the provision of water and sewer services.

2.02 Incorporation of Recitals. The foregoing recitals shall be deemed true and correct in all respects with respect to this Agreement and shall serve as the basis for the interpretation of this Agreement.

2.03 Permitted Uses, Density, Height and Size of Structures. Pursuant to NRS §278.0201 and the Code, this Agreement must set forth the maximum height and size of structures to be constructed on the Subject Property, the density of uses and the permitted uses of the land. County agrees the Planned Community may be developed to the density and with the land uses set forth in the Land Use and Development Guide/Plan, along with the development standards set forth in the Concurrent Approvals and the Applicable Rules.

SECTION 3 – DEVELOPMENT OF THE PLANNED COMMUNITY

3.01 Time for Construction and Completion of the Planned Community. Subject to the terms of this Agreement and Applicable Rules, Owner shall have discretion as to the time of commencement, construction, phasing, and completion of any and all development of the Planned Community. Nothing herein shall be construed to require the Owner to develop the Planned Community or any part thereof.

3.02 Reliance on Concurrent Approvals and Applicable Rules. County hereby agrees that Owner will be permitted to carry out and complete the entire Planned Community in accordance with the uses and densities set forth in the Concurrent Approvals subject to the terms and conditions of this Agreement and the Applicable Rules. Pursuant to the terms of this Agreement and subject to Owner's infrastructure obligations described in this Agreement, the development of the Planned Community may proceed as if all of it were in an area designated "Community District 2" notwithstanding that portions of the Planned Community which otherwise have the characteristics of "Community District 3".

3.03 Air Quality Conformity. Owner acknowledges County has adopted an air quality plan and agrees to comply with the applicable provisions thereof, including any state and federal rules and regulations.

3.04 Dust Mitigation. Owner will educate builders and contractors within the Planned Community of the applicable rules of the Clark County Department of Air Quality & Environmental Management with respect to dust mitigation and will encourage compliance therewith.

3.05 Water Conservation. Owner agrees to encourage water conservation in the Planned Community. Owner agrees to design any open space using the best available, water conserving techniques, including but not limited to proper soil preparation and water conserving irrigation systems and equipment. Landscaping adjacent to public streets shall be limited to water conserving plant materials.

3.06 Temporary Storm Water Construction Permit. Owner agrees to educate builders and contractors within the Planned Community on the requirements for a Temporary Storm Water Construction Permit issued from the Nevada Division of Environmental Protection (NDEP).

SECTION 4 – PUBLIC FACILITIES

4.01 Public Facilities. Owner agrees that prior to issuance of any building permit for a single family dwelling, multiple family dwelling, retail, office, industrial or hotel use in the Planned Community, they will pay the fees as set forth in the Public Facilities Chart below, hereinafter referred to as Chart 4.01-A, except as modified by this Section 4.01.

In addition, the fees set forth in Chart 4.01-A below may be increased or decreased from time to time during the term of this Agreement if the modified fees are uniformly applied to all development and construction within the Public Facilities Needs Assessment area. The County and Owner agree that any fee modifications shall be applied only for building permits not yet issued. Owner and the County will not be entitled to any payment or reimbursements for fees paid for building permits issued prior to any such fee modification.

CHART 4.01-A PUBLIC FACILITIES CHART			
Type of Development	Infrastructure Category		Total
	Parks	Public Safety¹	
Single Family Dwelling Unit (per dwelling unit)	\$532.93	\$900.81	\$1433.74
Multi Family Dwelling Unit (per dwelling unit)	\$532.93	\$883.24	\$1416.17
Retail (per square foot gross floor area)	N/A	\$0.60	\$0.60
Office (per square foot gross floor area)	N/A	\$0.67	\$0.67
Industrial (per square foot gross floor area)	N/A	\$0.40	\$0.40
Hotel (per room)	N/A	\$902.27	\$902.27
¹ Fees only for Fire; no Metro			

4.02 Parks. In addition to the fees for parks in Chart 4.01-A above, Owner agrees that this development is subject to the Residential Construction Tax, as set forth and defined in Nevada Revised Statutes.

4.03 Traffic Study. Owner shall prepare and submit to the County (and NDOT if applicable) a Traffic Study (if required) acceptable to the County (and NDOT if applicable) for the Subject Property prior to submittal of any final map for technical review, or prior to County issuance if any grading or building permits; whichever occurs first, and Owner agrees to comply with said Study as approved by the County. Any modification to the Transportation Study must be approved by the Director of the Department of Public Works.

In addition to the fees in Chart 4.01-A above, Owner agrees to construct at its sole cost and expense and dedicate to the County (or NDOT if applicable) any such roadway and traffic improvements identified in the traffic study as approved with conditions by the County (and NDOT if applicable), which are necessary for the Subject Property or for the mitigation of any traffic impacts caused by the development of the Subject Property.

Each facility must be built in the manner prescribed by the Code, NRS, and in accordance with the, "Uniform Standard Drawings for Public Works Construction, Off-Site Improvements, Clark County Area, Nevada", as amended by the Concurrent Approvals as approved by the County, and the State's Design Manual prior to issuance of any building permits for the area impacted by the facilities, as identified in the Traffic Study as approved with conditions by the County (an NDOT if applicable). Nothing herein shall be construed to require Owner to construct the applicable traffic improvements if Owner does not develop the impacted area. Owner acknowledges it shall be responsible for all public and private roadway construction (if applicable), utility installations and modifications, lighting, traffic control equipment and signage, and aesthetic improvements relating to the development.

4.04 Drainage Study. Owner shall prepare and submit to the County a Drainage Study, if required by the Clark County Department of Public Works, acceptable to the County for the Subject Property prior to recording any final map or the issuance of any grading and/or building permits. In addition to the fees in Chart 4.01-A above, Owner agrees to construct at its sole cost and expense and dedicate to the County such flood and drainage facilities identified in the drainage study which are necessary for the flood protection of the Subject Property or for the mitigation of any downstream flood impacts caused by the development of the Subject Property.

Each facility must be built, in the manner prescribed by Code, prior to issuance of any grading and/or building permits for the area impacted by the facilities as identified in the approved Drainage Study in accordance with Code. Notwithstanding any other provision in this section no grading or building permit shall be issued in any area not protected by the drainage facilities identified in the approved Drainage Study.

SECTION 5 – REVIEW AND DEFAULT

5.01 Frequency of Reviews. As required by NRS §278.0205 and the Development Agreement Ordinance, at least once every twenty-four (24) months during the Term of this Agreement, Owner shall provide and County shall review in good faith a report submitted by Owner documenting the extent of Owner's and County's material compliance with the terms of this Agreement during the preceding twenty-four (24) months. If at the time of review an issue not previously identified in writing is required to be addressed, the review, at the request of either party, shall be continued to afford sufficient time for response.

5.02 Opportunity to be Heard. County and Owner shall be permitted an opportunity to be heard orally and in writing before the County Commission regarding their performance under this Agreement in the manner set forth in Development Agreement Ordinance.

5.03 Procedures in the Event of Noncompliance. In the event of any noncompliance with any provision of this Agreement, the party alleging such noncompliance shall deliver to the other in writing a courtesy notice, not less than thirty (30) calendar days prior to declaring a default under this Agreement. The time of notice shall be measured from the date of post mark which may be sent by regular mail.

The courtesy notice shall state the reason for noncompliance, any action necessary to correct the noncompliance, specify the nature of the alleged default and, where appropriate, the manner and period of time in which the noncompliance may be satisfactorily corrected. During the period of time the default letter is pending, the party alleged to be in default shall not be considered in default for the purposes of termination or institution of legal proceedings. If the default is corrected, then no default shall exist and the noticing party shall take no further action. If the default is not corrected within thirty (30) calendar days, the following courses of action shall apply:

(a) County Procedures

(i) Intent to Remedy Noncompliance. After proper notice and the expiration of the above-referenced periods for correcting the alleged default, the Director of Development Services, or his or her designee, may do one or both of the following options:

- (1) Immediately direct County staff to recommend that all future zoning, land use, and mapping applications within the Planned Community be conditioned so that the building permits to be issued as a result of those approvals shall not be issued until the default is corrected, or;
- (2) Issue a letter providing notice of County's intent to set the matter for hearing before the County Commission. The letter shall notify Owner of the action taken. In the event the County selects this option, County shall give Owner at least seven (7) business days notice to correct the default before the matter is scheduled for a hearing. The letter notifying Owner of the hearing shall contain the intended hearing date. The seven (7) business days will be measured from the date of the certified mailing of the notice.

(ii) Hearing Schedule. If the default is not corrected within the time specified above, the matter shall be scheduled and noticed as required by law for consideration and review by the County Commission on the next available Commission zoning agenda.

(iii) Review by County Commission. Following consideration of the evidence presented before the County Commission and a finding based on substantial evidence that a default has occurred by Owner and the default remains uncorrected, the County Commission may authorize the suspension of building permits within the Planned Community or may amend or terminate this Agreement. Termination shall not in any manner rescind, modify, or terminate any Vested Right in favor of Owner, existing or received, as of the date of the termination. Owner shall have twenty-five (25) calendar days after the date of notice of the County Commission's decision is filed with the Clark County Clerk, Commission Division, to institute legal action pursuant to Sections 5.05 and 5.06 hereof, to determine whether the County Commission abused its discretion in determining whether a default existed and remained uncorrected.

(b) Owner Procedures

(i) After proper notice and the expiration of the above-reference periods for correcting the alleged default, Owner may issue a letter requesting a hearing before the County Commission for review of the alleged default. Upon receipt of the letter, County shall schedule an item to consider the alleged default on the next available Commission zoning agenda.

(ii) Review by County Commission. Following consideration of the evidence presented before the County Commission and a finding based on substantial evidence that a default has occurred by County and remains uncorrected, the County Commission shall direct County staff to correct the default. Owner shall have twenty-five (25) calendar days after the date of notice of the County Commission's decision is filed with the Clark County Clerk, Commission Division, to institute legal action pursuant to this Section hereof to determine whether the County Commission abused its discretion in determining whether a default existed and remained uncorrected.

(c) Waiver. Failure or delay in giving any notice provided for herein shall not constitute a waiver of any default. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies in respect to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such party of its right to institute and maintain any actions or proceeding which it may deem necessary to protect, assert, or enforce any of its right or remedies.

(d) Notices. All notices provided for herein shall be sent to and in the manner provided in Section 7.08 of this Agreement.

5.04 Option to Terminate. After proper notice and the expiration of the above-referenced period for correcting the alleged default, the party alleging the default shall give notice of intent to amend or terminate this Agreement pursuant to NRS §278.0205 (the "Notice of Intent"), with notices sent in the manner provided by Section 7.08 of this agreement. Following any such Notice of Intent, the matter shall be scheduled and noticed as required by law for consideration and review by the County Commission.

5.05 Unavoidable Delay or Default, Extension of Time for Performance. Neither party hereunder shall be deemed to be in default, and performance shall be excused, where delays or defaults are caused by war, acts of terrorism, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by governmental entities, failure of governmental agencies (other than County) to perform acts or deeds necessary for the performance of this Agreement, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations, litigation, or similar matters beyond the control of the parties. If written notice of any such delay is given to County within thirty (30) calendar days after the commencement thereof, an automatic extension of time, unless otherwise objected to by County within ten (10) business days of such written notice, shall be granted coextensive with the period of the enforced delay, or longer as may be required by circumstances or as may be subsequently agreed to between County and Owner.

5.06 Institution of Legal Action. The County and Owner agree that the County would not have entered into this agreement if it were liable for damages under or with respect to this Agreement. Accordingly, the County and the Owner may pursue any remedy at law or equity available for breach, except that neither the Owner nor the County shall be liable to the other or to any other person or entity for any monetary damages whatsoever. Prior to the institution of any legal action, the party seeking legal action must give the thirty (30) day notice of default as set forth in Section 5.03. Following such notice, a public hearing must be held by the County Commission where the allegations will be considered and a decision

regarding their merits will be reached. Any judicial review of the County Commission's decision or any legal action taken pursuant to this Agreement will be heard by a Court under the standard review appropriate to Court review of zoning actions, and the decision of the County Commission shall be overturned or overruled if their decision is clearly arbitrary and capricious. Judicial review of the decision of the County Commission shall be limited to the evidence presented to the County Commission at the public hearing. If a party desires to present new or additional evidence to the Court, they may petition the Court to remand the matter to the County Commission to consider the additional or new evidence. Jurisdiction for judicial review or any judicial action under this Agreement shall rest exclusively with the Eighth Judicial District Court, State of Nevada.

5.07 Applicable Laws. This Agreement shall be construed and enforced in accordance with the law of the State of Nevada.

SECTION 6 – CONFLICTING LAWS

6.01 Conflicting State or Federal Rules. In the event that any conflicting state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the County, this Agreement shall remain in full force and effect as to those provisions not affected, and the conflicting laws or regulations shall not be applied retroactively, and:

(a) Notice and Copies. Either party, upon learning of any such matter, will provide the other party with written notice thereof and provide a copy of any such law, regulation or policy or an account of any such action or inaction together with a statement of how any such matter conflicts with the provisions of this Agreement; and

(b) Modification Conferences. The parties shall, within thirty (30) calendar days of the notice referred to in the preceding subsection, meet and confer in good faith and attempt to modify this Agreement to bring it into compliance with any such federal or state law or regulation, or accommodate any such action or inaction.

6.02 County Commission Hearings. In the event the County believes that an amendment to this Agreement is necessary pursuant to this Section 6 due to the effect of any federal or state law or regulation, the proposed amendment shall be scheduled for hearing before the County Commission. The County Commission shall determine the exact nature of the amendment or suspension necessitated by such federal or state law or regulation or action or inaction. Owner shall have the right to offer oral and written testimony at the hearing. Any suspension or modification ordered by the County Commission pursuant to such hearing is subject to judicial review as set forth in 5.06. The parties agree that any matter submitted for judicial review shall be subject to expedited review in accordance with Rule 2.15 of the Eighth Judicial District Court of the State of Nevada.

6.03 Cooperation in Securing Permits. The County shall use its best efforts to cooperate with Owner in securing any County permits, licenses or other authorizations which may be required as a result of any amendment or suspension resulting from actions initiated under this Section 6. Owner will be responsible to pay all applicable fees in connection with securing of the permits.

SECTION 7 – GENERAL PROVISIONS

7.01 Enforcement and Binding Effect. Subject to the limitations of NRS §278, this Agreement is enforceable by either party in accordance with its terms notwithstanding any change (which, except for this Agreement, would otherwise be applicable) in any of the Applicable Rules. Nothing in this Agreement shall prevent the County from increasing "cost based fees" which are deemed to be administrative fees for issuance of land use approvals, building permits, plan checks, or inspections which are based upon actual costs to the County and which are uniformly applied to all development and construction subject to the County's jurisdiction. "Cost based fees" do not include the fees addressed in Section 4.01 of this Agreement.

7.02 Duration of Agreement. The Term of this Agreement shall commence upon the Effective Date and shall expire on the date the land use application expires or upon the eighth (8th) anniversary of the Effective Date, whichever occurs earliest, unless extended by written agreement executed by County and Owner.

7.03 Assignment.

(a) Transfer Not to Relieve Owner of its Obligation. Except as expressly provided herein, no assignee or transferee of any portion of the Planned Community within the area covered by a recorded subdivision map shall be subject to the obligations of Owner as to the portion of the Planned Community so assigned or transferred nor be deemed to have assumed all such obligations, and such assignment or transfer shall not relieve Owner of its obligation as to the assigned or transferred portion of the Planned Community.

(b) Transfer to an Affiliate of Owner. The rights of Owner under this Agreement may be freely transferred or assigned to any entity, partnership, or corporation, which Owner controls, or in which Owner has a controlling interest, or which controls Owner; provided, such entity shall assume in writing all obligations of Owner hereunder.

(c) Third Party Assignment. The rights and obligations of Owner under this Agreement may be freely transferred or assigned to a third party not affiliated with Owner, provided such third party assumes in writing all obligations of Owner hereunder as to the assigned or transferred portion of the Planned Community along with a copy of the sale, transfer, conveyance, or assignment agreement wherein the third party assumes the obligations of the Owner. Upon any such assignment hereunder, the Owner shall be relieved of all obligations and liabilities under or in connection with this agreement. In connection with the conveyance of any portion of the property, Owner shall provide County with written notice of any sale, transfer, conveyance or assignment of any unimproved portion of the Planned Community.

(d) Financial Transactions. Owner has full discretion and authority to transfer, assign or encumber the Planned Community or portions thereof in connection with financing transactions, without limitation on the size or nature of any such transaction, the amount of land involved or the use of the proceeds there from, and may enter into such transaction at any time and from time to time without permission of or notice to County.

7.04 Amendment or Cancellation of Agreement. Except as otherwise permitted by NRS §278.0205 and Section 5 of this Agreement, this Agreement may be amended from time to time or canceled only upon the mutual written agreement of the parties hereto.

7.05 Indemnity; Hold Harmless. Except as expressly provided in this Agreement, Owner shall hold County, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury, including death and claims for property damage which may arise from the direct or indirect operations of Owner or those of its contractors, subcontractors, agents, employees, or other persons acting on Owner's behalf which relate to the development of the Planned Community. Owner agrees to and shall defend County and its officers, agents, employees, and representatives from actions for damages caused or alleged to have been caused by reason of Owner's activities in connection with the development of the Planned Community. Owner agrees to indemnify, hold harmless, and provide and pay all costs for a defense for County in any legal action filed in a court of competent jurisdiction by a third party challenging the validity of this Agreement. The provisions of this Section shall not apply to the extent such damage, liability, or claim is solely caused by the intentional or negligent act of County, its officers, agents, employees, or representatives.

7.06 Binding Effect of Agreement. Subject to Section 7.03 hereof, the burdens of this Agreement bind, and the benefits of this Agreement inure to the parties' respective successors in interest.

7.07 Relationship of Parties. It is understood that the contractual relationship between County and Owner is such that Owner is an independent contractor and not an agent of County for any purpose.

7.08 Notices. All notices, demands and correspondence required or provided for under this Agreement shall be in writing and delivered in person or sent by overnight courier or mailed by certified mail postage prepaid, return receipt requested. Notices shall be sent to the address on file to Owner and/or Applicant, as shown on "Exhibit B" and the Comprehensive Planning Department and Office of the District Attorney-Civil Division addressed as follows:

To County: COUNTY OF CLARK
Department of Comprehensive Planning, Current Planning Division
Clark County Government Center
500 South Grand Central Parkway, 1st Floor
P.O. Box 551741
Las Vegas, NV 89155-1741
Attn: Joel McCulloch

With a Copy to: COUNTY OF CLARK
OFFICE OF THE DISTRICT ATTORNEY-CIVIL DIVISION
Clark County Government Center
500 South Grand Central Parkway, 5th Floor
P.O. Box 552215
Las Vegas, Nevada 89155-2215

Either party may change its address by giving notice in writing to the other and thereafter notices, demands and other correspondence shall be addressed and transmitted to the new address. Notices given in the manner described shall be deemed delivered on the day of personal delivery or the delivery date by overnight courier or mail is first attempted.

7.09 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

7.10 Waivers. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate officers of the County or Owner, as the case may be.

7.11 Recording Amendments. Promptly after the Effective Date, an executed original of this Agreement shall be recorded in the Official Records of Clark County, Nevada. All amendments hereto must be in writing signed by the appropriate officers of County and Owner in a form suitable for recordation in the Official Records of Clark County, Nevada. Upon the completion of performance of this Agreement or its earlier revocation or termination, a statement evidencing said completion or revocation signed by appropriate officers of County and Owner shall be recorded in the Official Records of Clark County, Nevada.

7.12 Release. Each residential lot within the Subject Property shall be automatically released from the encumbrance of this Agreement without the necessity of executing or recording any instrument of release upon the issuance of a building permit for the construction of a residence thereon.

7.13 Headings, Exhibits, Cross-references. The headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms of this Agreement. All exhibits attached to this Agreement and the recitals at the front of this Agreement are incorporated herein by the references thereto contained herein. Any term used in an exhibit hereto shall have the same meaning as in this Agreement unless otherwise defined in such exhibit. All references in this Agreement to Sections and Exhibits shall be to Sections and Exhibits of or to this Agreement, unless otherwise specified.

7.14 Severability of Terms. If any term or other provision of this Agreement is held to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect, provided that the invalidity, illegality or unenforceability of such term does not materially impair the parties' ability to consummate the transactions contemplated hereby. If any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall, if possible, amend this Agreement so as to affect the original intention of the parties.

7.15 Voluntary Agreement. Owner acknowledges that they had the option of conducting their own public facilities needs assessment study, but instead voluntarily chose to accept the findings, conclusions and fee schedule contained within the County PFNA defined in Section 1.01(p) of this Agreement. Owner further acknowledges and agrees that it voluntarily, willingly and without protest and duress freely enters into this Agreement and accepts the terms and conditions herein.

7.16 No Third Party Beneficiary Rights. This Agreement shall inure solely to the benefit of each party hereto and its successors and permitted assigns and nothing in this Agreement, express or implied, shall confer upon any other person or entity, including the public or any member thereof, any rights, benefits or remedies of any nature whatsoever.

[signatures appear on following page]

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the day and year first above written, as authorized by Ordinance No. 1579 of the Clark County Code, to be effective on the date shown in Section 2.01(c).

COUNTY:

BOARD OF COUNTY COMMISSIONERS,
COUNTY OF CLARK, STATE OF NEVADA

Attest:

By: _____
Marilyn K. Kirkpatrick, Chair

Lynn Marie Goya, County Clerk

ACKNOWLEDGMENT:

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

This instrument was acknowledged before me on the _____ day of _____, _____,

By _____, Chair of the Board of County Commissioners, County of
Clark, State of Nevada

NOTARY PUBLIC

Signature

My Commission expires: _____

OWNER:

LAD 5, LLC, a Delaware limited liability company


By: LAD 5 Holdco, LLC

Its: Sole member and manager

By: Walton International Group (USA), Inc.

Its: Sole member and manager

By:


Ed Hadley as Authorized Signatory

ACKNOWLEDGMENT:


STATE OF ARIZONA)
)ss:
COUNTY OF MARICOPA)

This instrument was acknowledged before me on the 20th day of August, 2021,

by Ed Hadley
(Printed Name of Document Signer)



NOTARY PUBLIC


Signature

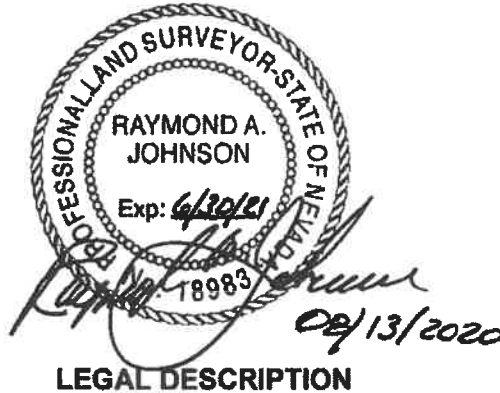
My Commission expires: 08/05/2022

Exhibit “A”
Legal Description

(see next page for attachment)



2727 SOUTH RAINBOW BOULEVARD *
LAS VEGAS, NEVADA 89146-5148 PHONE 702-873-7550 * FAX 702-362-2597



LEGAL DESCRIPTION

BEING THE SOUTHEAST QUARTER (SE 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 21, TOWNSHIP 22 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA.

TOGETHER WITH:

THE SOUTH HALF (S 1/2) OF THE SOUTHWEST QUARTER (SW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 21, TOWNSHIP 22 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA.

TOGETHER WITH:

THE SOUTHWEST QUARTER (SW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 21, TOWNSHIP 22 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA.

TOGETHER WITH:

THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 21, TOWNSHIP 22 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA.

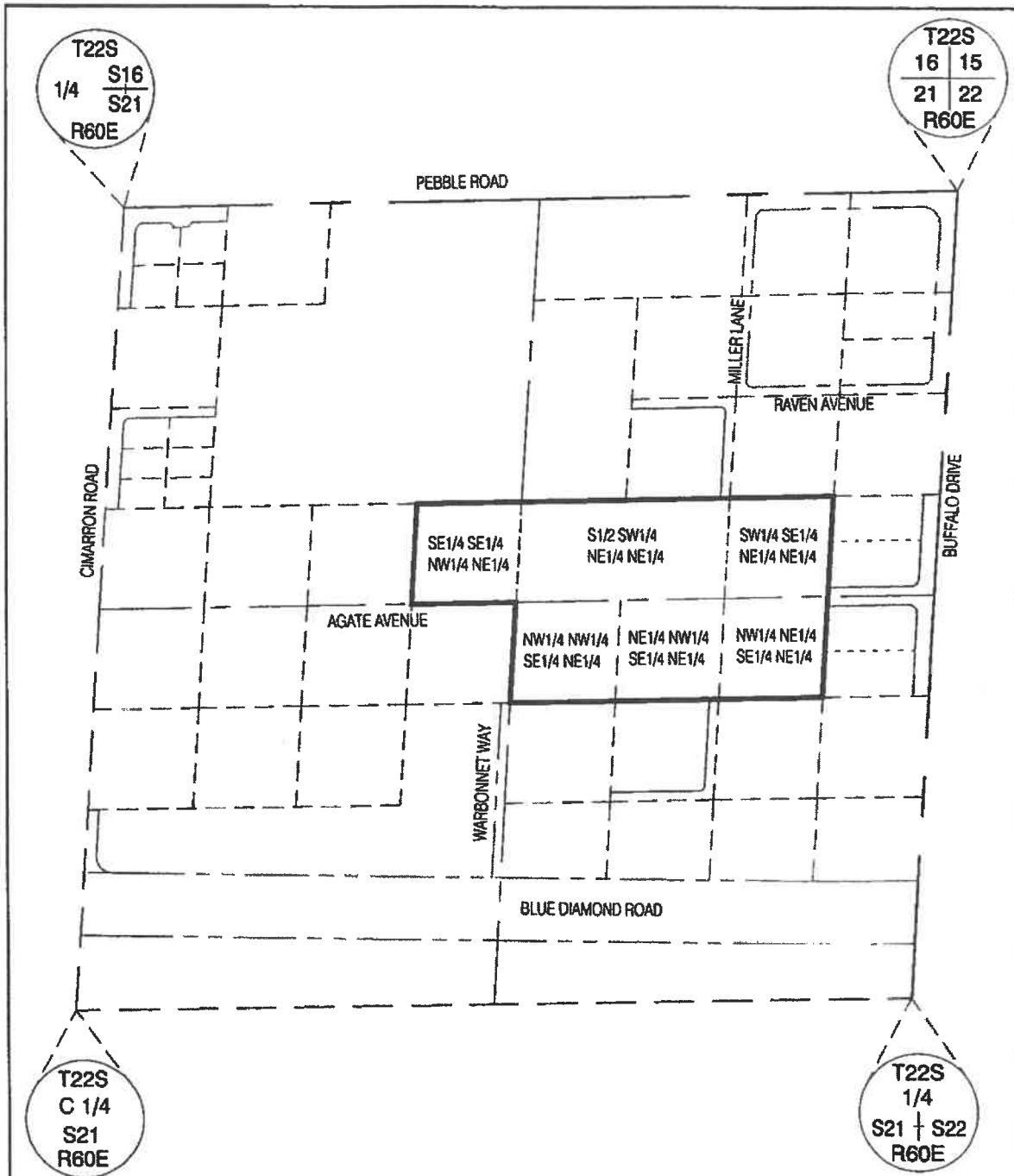
TOGETHER WITH:

THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 21, TOWNSHIP 22 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA.

TOGETHER WITH:

THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 21, TOWNSHIP 22 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA.

CONTAINING 17.14 ACRES, MORE OR LESS AS DETERMINED BY COMPUTER METHODS.



G:\8049\Legals\8049 ZONING LEGAL

G:\8049\Legals\8049 ZONING.dwg



**EXHIBIT TO ACCOMPANY
LEGAL DESCRIPTION**

ZONING EXHIBIT

SCALE	HORZ. 1" = 500'
	VERT.
W.O. NO.	8049
DRAWN BY:	WLB
DATE:	AUGUST 2020
SHEET	1 OF 1

Exhibit “B”
Development Agreement Owner Correspondence

Exhibit "B"
Development Agreement Owner/Applicant Correspondence

In accordance with Section 7.08, all notices, demands and correspondence required or provided for under this agreement shall be sent to the Owner and/or Applicant as follows:

Address all Correspondence as follows:

Owner	<u>LAD 5 LLC</u> <u>14614 NORTH KIERLAND BOULEVARD, c/o: WALTON GLOBAL HOLDINGS LTD.</u> <u>SCOTTSDALE, ARIZONA 85254</u>
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Applicant/Correspondent	<u>VTN-NEVADA</u> <u>2727 SOUTH RAINBOW BOULEVARD</u> <u>LAS VEGAS, NEVADA 89146</u>
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Exhibit “C”

Agenda Sheet, Notice of Final Action, and Agenda Map

(see next page for attachments)

RESIDENTIAL SUBDIVISIONS
(TITLE 30)

UPDATE
AGATE AVE/BUFFALO DR

PUBLIC HEARING

APP. NUMBER/OWNER/DESCRIPTION OF REQUEST

NZC-20-0524-MAK ZAK LLC, ET AL:

HOLDOVER ZONE CHANGES for the following: **1)** reclassify 9.8 acres from an R-E (Rural Estates Residential) (RNP-I) Zone to an R-2 (Medium Density Residential) Zone; and **2)** reclassify 7.4 acres from an R-E (Rural Estates Residential) (RNP-I) Zone and a C-2 (General Commercial) Zone to an RUD (Residential Urban Density) Zone.

USE PERMIT for a planned unit development (townhomes).

WAIVERS OF DEVELOPMENT STANDARDS for the following: **1)** increase wall height; **2)** reduce setbacks; **3)** reduce parking; **4)** increase the number of dwelling units accessing a private drive; **5)** reduce street intersection off-set; **6)** alternative residential driveway geometrics; **7)** reduce curb radius; and **8)** allow an inverted street cross section.

DESIGN REVIEWS for the following: **1)** a single family residential subdivision on 9.8 acres; **2)** a townhome planned unit development on 7.4 acres; **3)** allow a hammerhead cul-de-sac design; and **4)** increased finished grade.

Generally located on the north and south sides of Agate Avenue, 280 feet west of Buffalo Drive within Enterprise (description on file). JJ/jt/jd (For possible action)

RELATED INFORMATION:

APN:

176-21-501-030; 176-21-601-005; 176-21-601-022 through 176-21-601-023

WAIVERS OF DEVELOPMENT STANDARDS:

1. Increase block wall height to **12 feet** (6 feet of retaining wall plus 6 feet of screen wall) where 9 feet (3 feet of retaining wall plus 6 feet of screen wall) is the maximum per Section 30.64.050 (a **33%** increase).
2.
 - a. **Reduce** the setback for residential units from a drive aisle to **5 feet** where 10 feet is required per Section 30.24.080 (a **50%** reduction).
 - b. **Reduce the setback for residential units from a street to 6 feet where 10 feet is required per Section 30.24.080 (a 40% reduction).**
 - c. Reduce height/setback ratio to 10 feet where 58 feet 6 inches is required from the townhomes to a single family residence to the east per Figure 30.56-10 (an 83% reduction).
 - d. Reduce height/setback ratio to 7 feet where 58 feet 6 inches is required from the townhomes to a single family residence to the south per Figure 30.56-10 (an 88% reduction).

3. Reduce parking for a townhome planned unit development to 224 spaces where 253 spaces are required (a 13% reduction).
4. Increase the number of dwelling units accessing a private drive to 8 where 6 is the maximum per Section 30.52.030 (a 34% increase).
5.
 - a. Reduce the street intersection off-set between Miller Lane and Private Drive H to 60 feet where 125 feet is the minimum per Section 30.52.052 (a 52% reduction).
 - b. Reduce the street intersection off-set between Miller Lane and Private Drive I to 60 feet where 125 feet is the minimum per Section 30.52.052 (a 52% reduction).
6. Reduce the distance from a residential driveway to a property line to 2 feet where 6 feet is the minimum per Uniform Standard Drawing 222 (a 67% reduction).
7. Reduce minimum back of curb radius to 15 feet where 20 feet is the minimum per Uniform Standard Drawing 201 (a 34% decrease).
8. Allow an inverted street cross section where a crown street cross section is required per Uniform Standard Drawing 210.S1.

DESIGN REVIEWS:

1. Single family subdivision on 9.8 acres.
2. Townhome planned unit development on 7.4 acres.
3. Allow a hammerhead cul-de-sac design where not allowed per Section 30.56.080.
4. Increase finished grade to **64** inches where a maximum of 18 inches is the standard per Section 30.32.040 (a **255%** increase).

LAND USE PLAN:

ENTERPRISE - COMMERCIAL GENERAL

ENTERPRISE - RESIDENTIAL LOW (UP TO 3.5 DU/AC)

BACKGROUND:

Project Description

General Summary - Single Family Subdivision (north of Agate Avenue)

- Site Address: N/A
- Site Acreage: 9.8
- Number of Lots: **76**
- Density (du/ac): **7.8**
- Minimum/Maximum Lot Size (square feet): 3,300/**5,885**
- Number of Stories: 2
- Building Height (feet): 24 feet, 7 inches
- Square Feet: 1,562/1,673/1,836

General Summary - Townhome Planned Unit Development (south of Agate Avenue)

- Site Address: N/A
- Site Acreage: 7.4
- Number of Lots: **99**
- Density (du/ac): **13.5**
- Minimum/Maximum Lot Size (square feet): 945/965
- Number of Stories: 2

- Building Height (feet): 25 feet, 6 inches
- Square Feet: 1,308/1,344/1,405/1,426
- Open Space Required/Provided (square feet): 25,146/**39,576**
- Parking Required/Provided: 253/224

Neighborhood Meeting Summary

Meeting invitations were mailed to property owners within a 1,500 foot radius of the site for a virtual neighborhood meeting, which was held on August 24, 2020 at 5:30 p.m. Six neighbors attended the virtual meeting, and 4 attendees expressed opposition. Items discussed at the meeting included providing larger lots on the perimeter of the site and requiring a noise/odor disclosure for new homeowners since the subdivision will be adjacent to residential properties with horses.

Site Plans

Single Family Subdivision (north of Agate Avenue):

The plans depict a single family residential subdivision on 9.8 acres on the north side of Agate Avenue. Public Streets will include Agate Avenue, which runs east/west, and Warbonnet Way, which runs north/south. These public streets are 60 feet wide with 5 foot wide sidewalks on each side. Private streets that are 44 feet wide with a 5 foot wide sidewalk on 1 side include a private street running east/west, and 2 private streets that extend north of Agate Avenue. **The western north/south private street ends in a hammerhead cul-de-sac design, and the eastern north/south private street ends in a stub street.**

Larger lots, **greater than 5,000** square feet, are located **along the north side** of the site. All the other lots in the subdivision are at least 3,300 square feet.

Townhome Planned Unit Development (south of Agate Avenue):

The plans depict a townhome development on the south side of Agate Avenue, the east side of Warbonnet Way, and the east and west sides of Miller Lane. Approximately 2.4 acres of the project are located on the east side of Miller Lane, and approximately 5 acres are located on the west side of Miller Lane. Miller Lane provides the only vehicular access to both the east and west sides of the development. Entrance drives are 33 foot wide private drives, and within the townhome development, the private drives are 25 feet wide. Speed humps are provided to slow traffic on the longer sections of the internal private drives.

Townhomes are arranged into **24** separate 4 plex buildings **and one, 3 plex building**. Eight of the buildings are located on the east side of Miller Lane, and 17 buildings are located on the west side of Miller Lane. A reduction to the minimum height/setback ratio is required since proposed setbacks are 10 feet to the east, which is adjacent to a single family residence, and 7 feet to the south, a portion of which is adjacent to a single family residence. Setbacks for the individual townhomes are as follows:

- **Rear:** 7 feet
- **Side:** zero feet

- **Side adjacent to a street: 6 feet**
- **Front: 5 feet**
- **Garage/Driveway: 5 feet**

Townhome buildings include a 5 foot **front** setback for the garages and driveways, **which** requires a waiver of development standards **since** a minimum 10 foot setback is required. **Also, the side setbacks of the townhomes are reduced to 6 feet where 10 feet is required, which also requires a waiver of development standards.**

Landscaping

Single Family Subdivision (north of Agate Avenue):

Landscaping is included on common lots on the side of certain residential lots adjacent to the public streets. In addition, trees are shown in the rear and side yards of residential lots along the perimeter of the subdivision, **per Title 30 standards**, to help provide an additional landscape buffer.

Townhome Planned Unit Development (south of Agate Avenue):

Open space with landscaping is provided on common lots around the perimeter of the project, around the **3 and 4** plex buildings, and on a 24,901 square foot centralized common lot on the west side of the entrance from Miller Lane. The applicant indicates that the perimeter of the townhome development will be fenced; however, pedestrian access gates will be provided to the exterior of the project to access parking spaces on the public streets. Also, the vehicular driveways are not gated.

Elevations

Single Family Subdivision (north of Agate Avenue):

Homes within the single family residential subdivision are 2 stories and extend up to 24 feet 7 inches to the top of the pitched barrel tile roof. Exterior materials include painted stucco and decorative foam pop-outs around the windows on the front of the house and above the windows and sliding glass door on the side and rear.

Townhome Planned Unit Development (south of Agate Avenue):

The townhomes are 2 stories and extend up to 25 feet 6 inches to the top of the pitched asphalt shingle roof. Exterior elevations include multiple off-set surface planes painted solid subdued grey, blue, and off-white to help break-up the visual mass of the buildings. The exterior will consist of painted stucco.

Floor Plans

Single Family Subdivision (north of Agate Avenue):

Floor plans for the single family homes are 1,562, 1,673, and 1,836 square feet. The first floor includes a 2 car garage, great room, dining room, kitchen, and half bathroom. The second floor includes bedrooms, bathrooms, and laundry room.

Townhome Planned Unit Development (south of Agate Avenue):

Floor plans for the townhomes are 1,308, 1,344, 1,405, and 1,426 square feet. The first floor includes either a 1 or 2 car garage, kitchen, and living space. The second floor includes the bedrooms and bathrooms. There is no bathroom on the first floor for any model of the townhomes.

Signage

Signage is not a part of this request.

Applicant's Justification

The applicant states that the project is consistent with the current trends of residential development in the area. The zoning is appropriate, and the alternative standards are the minimum necessary to develop the site.

For example, the increased finished grade is necessary due to the existing slope of the site from west to east. Fill areas will be located along the eastern portion of the site to accommodate existing drainage patterns. Similarly, the increased retaining wall is due to the slope of the site. Increased wall height will only occur along the western boundary of the site, adjacent to Warbonnet Way. Lots adjacent to Warbonnet Way will be set below the grade of the street, which necessitates increasing the retaining wall from 3 feet to 6 feet. This portion of the site will be lowered to accommodate existing drainage patterns.

The proposed hammerhead street design will not create any negative impacts since the proposed single family residential development will include 20 foot driveways and 2 car garages.

Regarding the waivers of development standards, the applicant indicates that the alternatives will not negatively impact adjacent properties. For instance, the reduced/height setback ratio should not create any negative impacts to the 2 adjacent single family residential lots. Large 24 inch box trees are provided to help create a visual buffer. Reduced setbacks for the residential units from drive aisles is 5 feet, and the reduced **side street** setbacks to **6 feet** is appropriate for the overall compact design of the project. Also, according to the applicant, the reduction in parking for the townhome development is minor, and it will not impact the livability of the development.

Several waivers of development standards are necessary for off-site development requirements. According to the applicant, increasing the number of dwelling units that access a private drive from 6 to 8 units will not impact the livability of the development since the 25 foot wide private drives are connected on either side to wider private drives. This will allow 2 points of access rather than a single point of access on a cul-de-sac or dead-end drive.

Reducing the street intersection off-set is necessary due to the design of the townhomes and the narrowness of the parcels. Speed of drivers will already be reduced in the townhome

development, and the number of drivers accessing these private drives will mostly be limited to residents.

The reduced setback from the driveways **and streets** to the property lines in the townhome complex is due to the types of units proposed. The applicant does not anticipate any detriment to the livability or safety of the development with the reduced setbacks.

A 15 foot back radius on the stub drives within the townhome development is necessary due to the limited area between the main access drives and the stub streets. These areas will serve a maximum of 3 units, the opposite curb radius is the standard 20 feet, and they will not limit any vehicular movements or Fire Department access.

Lastly, an inverted street section is necessary to avoid water going into the garages of the townhome units. The inverted street section will channel water to the wider private drives, which will convey water to the appropriate area.

Overall, the applicant indicates that the project is in harmony with the general purpose, goals, objectives, and standards for Clark County.

Prior Land Use Requests

Application Number	Request	Action	Date
PA-18-700015	Plan amendment to change the land use category for 20 acres, which included the portion of the site north of Agate Avenue, from RNP to RS; reduced to RL (Residential Low) by the Board of County Commissioners	Approved by BCC	March 2019
ZC-1026-05	Reclassified approximately 3,800 parcels, including the northern and eastern portion of the subject site, to R-E (RNP-I) zoning	Approved by BCC	October 2005
ZC-0001-07	Reclassified the southwestern portion of the subject site to C-2 zoning for a grocery store and convenience store	Approved by BCC	February 2007

Surrounding Land Use

	Planned Land Use Category	Zoning District	Existing Land Use
North	Rural Neighborhood Preservation (up to 2 du/ac) & Public Facilities	R-E (RNP-I)	Single family residential & undeveloped
South	Residential High (8 du/ac to 18 du/ac) & Commercial General	R-E & C-2	Single family residential & undeveloped
East	Rural Neighborhood Preservation (up to 2 du/ac) & Commercial General	R-E (RNP-I) & R-E	Single family residential
West	Residential Low (up to 3.5 du/ac) & Residential High (8 du/ac to 18 du/ac)	R-E (RNP-I) & R-E	Undeveloped

The subject site and surrounding area are in the Public Facilities Needs Assessment (PFNA) area.

Related Applications

Application Number	Request
VS-20-0523	A vacation and abandonment of patent easements along Miller Lane is a companion item on this agenda.
TM-20-500185	A tentative map for a single family subdivision north of Agate Avenue is a companion item on this agenda.
TM-20-500186	A tentative map for a townhome planned unit development south of Agate Avenue is a companion item on this agenda.

STANDARDS FOR APPROVAL:

The applicant shall demonstrate that the proposed request meets the goals and purposes of Title 30.

Analysis

Current Planning

Zone Change

The applicant shall provide Compelling Justification that approval of the nonconforming zoning boundary amendment is appropriate. A Compelling Justification means the satisfaction of the following criteria as listed below:

- 1. A change in law, policies, trends, or facts after the adoption, readoption or amendment of the land use plan that have substantially changed the character or condition of the area, or the circumstances surrounding the property, which makes the proposed nonconforming zone boundary amendment appropriate.*

Since the last amendment to the Enterprise Land Use Plan in 2019, there has been significant development of residential and commercial projects in the planning area. Therefore, the trend in development makes the residential zoning appropriate.

- 2. The density and intensity of the uses allowed by the nonconforming zoning is compatible with the existing and planned land uses in the surrounding area.*

Twenty-five acres of undeveloped land to the north of this development is planned Public Facility uses, undeveloped land to the west is planned for Residential Low and Residential High uses, and undeveloped parcels to the south are planned for Commercial General uses. Although 1 single family residential lot (2 acres) is located to the north side of the project, a 2.5 acre undeveloped lot north of the site is planned for Rural Neighborhood Preservation uses, and 2 single family residential lots (1.9 acres each) are located to the east, the majority of the surrounding undeveloped land is planned for uses with similar density and intensity to the proposed zoning districts.

- 3. There will not be a substantial adverse effect on public facilities and services, such as roads, access, schools, parks, fire and police facilities, and stormwater and drainage facilities, as a result of the uses allowed by the nonconforming zoning.*

The proposed residential zoning districts will not result on any additional impacts on the surrounding infrastructure not already contemplated for the area. However, the Clark County School District indicates that Steele Elementary School, Canarelli Middle School, and Sierra Vista High School were all over capacity for the 2019-2020 school year.

4. *The proposed nonconforming zoning conforms to other applicable adopted plans, goals, and policies.*

The proposed zoning districts comply with several goals and policies in the Comprehensive Master Plan. For example, Land Use Goal 2 encourages a mix of residential, commercial, and public facility uses. Public Facility uses are planned to the north of this site (however, the parcel planned for Public Facility uses closest to the subject project is under private ownership), and commercial uses are planned to the south of the site. As a result, the residential zoning will create a transition and mix of uses in the area. Similarly, Urban Specific Policy 7 encourages, in part, land uses that are complementary and of a similar scale and intensity. The single family zoning north of Agate Avenue is a similar intensity to the planned Residential Low uses to the west, Public Facility uses to the north, and the Commercial General uses to the south. South of Agate Avenue, the proposed Residential Urban Density zoning would allow up to 14 units per acre. This is complementary and similar intensity to the planned Residential High uses to the west and Commercial General uses to the south. Lastly, Land Use Goal 7 encourages housing alternatives to meet a range of lifestyle choices, ages, and affordability levels. The proposed zoning would allow both townhomes and single family residential development to help diversify the housing supply.

Summary

Zone Changes

Staff can support the proposed nonconforming zone changes for R-2 zoning north of Agate Avenue and RUD zoning south of Agate Avenue. The zoning districts will provide a transition from the Commercial General Uses to the south, Residential High and Residential Low uses to the west, and Public Facility uses to the north. In addition, there is a trend in residential development in the area. The zoning will not result in any unforeseen impacts on infrastructure, and the zoning requests comply to goals and policies in the Comprehensive Master Plan.

Use Permit

A use permit is a discretionary land use application that is considered on a case by case basis in consideration of Title 30 and the Comprehensive Master Plan. One of several criteria the applicant must establish is that the use is appropriate at the proposed location and demonstrate the use shall not result in a substantial or undue adverse effect on adjacent properties.

Planned unit developments shall minimize adverse impacts on surrounding property, encourage in-fill development, and provide consistency with applicable goals and policies. Staff finds that the planned unit development is appropriate as a transition from the commercial uses to the south to the single family residential uses to the north. The project is located on an in-fill site near Blue Diamond Road and Buffalo Drive, and the project is consistent with goals and policies in the Comprehensive Master Plan. For example, Land Use Goal 7 encourages housing alternatives to meet a range of lifestyle choices, ages, and affordability levels. The proposed planned unit

development with townhomes will create a housing alternative for residents; therefore, staff can support the request.

Waivers of Development Standards

According to Title 30, the applicant shall have the burden of proof to establish that the proposed request is appropriate for its existing location by showing that the uses of the area adjacent to the property included in the waiver of development standards request will not be affected in a substantially adverse manner. The intent and purpose of a waiver of development standards is to modify a development standard where the provision of an alternative standard, or other factors which mitigate the impact of the relaxed standard, may justify an alternative.

Waiver of Development Standards #1

An increased retaining wall height is necessary to develop this site to accommodate the existing slope and drainage patterns. The increased retaining wall to 6 feet where 3 feet is allowed will only occur along the western portion of the site, adjacent to Warbonnet Way. Street landscaping is provided along Warbonnet Way, and there should be no visual impact to the public realm since the pad sites along Warbonnet Way will be lower than the grade of the street; therefore, staff can support the request.

Waivers of Development Standards #2a & #2b

The reduced setback to the drive aisles and the reduced side street setbacks should not create any negative visibility issues, and these reduced setbacks are standard for compact townhome developments.

Waivers of Development Standards #2c & #2d

Although the height/setback ratio is reduced adjacent to a residential lot to the east and adjacent to a residential lot to the south, both residential parcels are planned for Commercial General uses. The parcel to the east is located adjacent to Buffalo Drive, and the parcel to the south could be incorporated into a larger commercial development with access from Blue Diamond Road; therefore, staff can support the request.

Waiver of Development Standards #3

Staff does not anticipate any negative impacts from the 13 percent reduction in parking spaces for the townhome development. Each unit will have either a 1 or 2 car garage, shared parking spaces are provided within the development, and on-street parking will be provided on Warbonnet Way, Agate Avenue, and Miller Lane. However, staff recommends a minimum of 2 pedestrian access points on Warbonnet Way, 3 pedestrian access points to Agate Avenue for the portion of the townhome development west of Miller Lane, and 2 pedestrian access points to Agate Avenue for the portion of the townhome development east of Miller Lane.

Design Reviews #1 & #3

The proposed single family development includes multiple access points to the surrounding public streets, and the development will be integrated into the community. Also, staff does not anticipate any negative impacts from the hammerhead street design since each house will have a 20 foot driveway and 2 car garage. Lastly, larger lots are located **along the northern property line**. As a result, staff can support design review #1 and design review #3.

Design Review #2

Urban Specific Policy 39 encourages higher density residential developments to be arranged in clusters to increase usable open space and recreational facilities. The proposed townhome planned unit development clusters the residences into **3 and 4** plex buildings, which increases the open space around the perimeter of the site and within the centralized 24,901 square foot common lot to west of Miller Lane. Overall, the planned unit development complies with the intent to maximize flexibility in residential development, in part, to help increase usable open space. As a result, staff can support design review #2.

Public Works - Development Review

Waiver of Development Standards #4

Staff has no objection to the request to increase the number of dwelling units to access a private drive provided that Fire Prevention approves the request.

Waiver of Development Standards #5

Staff has no objection to the reduction in the street intersection off-sets for between Miller Lane and Private Drive H or Miller Lane Private Drive I. The applicant provided additional common lots adjacent to Private Drive C and Private Drive D, so visibility will be improved for those entering the site.

Waiver of Development Standards #6

Staff has no objection to the reduction in the distance from the driveways to the property lines as this is a typical development pattern with single family attached products.

Waiver of Development Standards #7

Staff has no objection to the request to reduce the back of curb radius on the private streets provided that Fire Prevention approves the request.

Waiver of Development Standards #8

Staff has no objection to allowing an inverted crown on the private streets within the proposed subdivision. Through the technical studies, the applicant must demonstrate that this request will not be detrimental to the subdivision.

Design Review #4

This design review represents the maximum grade difference along the boundary of this application. This information is based on preliminary data to set the worst case scenario. Staff will continue to evaluate the site through the technical studies required for this application. Approval of this application will not prevent staff from requiring an alternate design to meet Clark County Code, Title 30, or previous land use approval.

Staff Recommendation

Approval. This item has been forwarded to the Board of County Commissioners' meeting for final action.

If this request is approved, the Board and/or Commission finds that the application is consistent with the standards and purpose enumerated in the Comprehensive Master Plan, Title 30, and/or the Nevada Revised Statutes.

STAFF CONDITIONS:**Public Works - Development Review**

- Right-of-way dedication to include 30 feet to 60 feet for Warbonnet Way, 30 feet to 60 feet for Agate Avenue, 60 feet for Miller Lane **south of Agate Avenue**, and associated spandrels.

PLANNING COMMISSION ACTION: February 2, 2021 – APPROVED – Vote: Unanimous
Current Planning

- Resolution of Intent to complete in 4 years;
- 1 story homes on the north and east property lines with a minimum of 10,000 square foot lots;
- Minimum 5 foot setback for residential units and garages from drive aisles;
- In the townhome development, provide a minimum of 2 pedestrian access points on Warbonnet Way, 3 pedestrian access points to Agate Avenue west of Miller Lane, and 2 pedestrian access points to Agate Avenue east of Miller Lane;
- Enter into a standard development agreement prior to any permits or subdivision mapping in order to provide fair-share contribution toward public infrastructure necessary to provide service because of the lack of necessary public services in the area;
- Certificate of Occupancy and/or business license shall not be issued without final zoning inspection.
- Applicant is advised that a new application for a nonconforming zone boundary amendment may be required in the event the building program and/or conditions of the subject application are proposed to be modified in the future; a substantial change in circumstances or regulations may warrant denial or added conditions to an extension of time; and that the extension of time may be denied if the project has not commenced or there has been no substantial work towards completion within the time specified.

Public Works - Development Review

- Drainage study and compliance;
- Drainage study must demonstrate that the proposed grade elevation differences outside that allowed by Section 30.32.040(a)(9) are needed to mitigate drainage through the site;
- Traffic study and compliance;
- Full off-site improvements;
- Right-of-way dedication to include 30 feet to 60 feet for Warbonnet Way, 30 feet to 60 feet for Agate Avenue, 60 feet for Miller Lane, and associated spandrels;
- Clark County Fire Prevention of street widths and radii.

- Applicant is advised that approval of this application will not prevent Public Works from requiring an alternate design to meet Clark County Code, Title 30, or previous land use approvals.

Clark County Water Reclamation District (CCWRD)

- Applicant is advised that a Point of Connection (POC) request has been completed for this project; to email sewerlocation@cleanwaterteam.com and reference POC Tracking #0151-2020 to obtain your POC exhibit; and that flow contributions exceeding CCWRD estimates may require another POC analysis.

WAIVER OF DEVELOPMENT STANDARDS #2A WAS WITHDRAWN WITHOUT PREJUDICE.

TAB/CAC:

APPROVALS: 1 card

PROTESTS: 11 cards, 23 letters

PLANNING COMMISSION ACTION: January 19, 2021 – HELD – To 02/02/21 – per Commissioner Nguyen.

COUNTY COMMISSION ACTION: March 3, 2021 – HELD – To 04/07/21 – per the applicant.

APPLICANT: D.R. HORTON

CONTACT: VTN-NEVADA, 2727 S. RAINBOW BOULEVARD, LAS VEGAS, NV 89146



Department of Comprehensive Planning

500 S Grand Central Pkwy • Box 551741 • Las Vegas NV 89155-1741
(702) 455-4314 • Fax (702) 455-3271

Nancy A. Amundsen, Director

NOTICE OF FINAL ACTION

April 19, 2021

VTN-NEVADA
2727 S. RAINBOW BLVD
LAS VEGAS, NV 89146

REFERENCE: NZC-20-0524

On the date indicated above, a Notice of Final Action was filed with the Clark County Clerk, Commission Division, pursuant to NRS 278.0235 and NRS 278.3195, which starts the commencement of the twenty-five (25) day limitation period specified therein.

The above referenced application was presented before the Clark County Board of County Commissioners at their regular meeting of **April 07, 2021** and was **APPROVED** subject to the conditions listed below. You will be required to comply with all conditions prior to the issuance of a building permit or a business license, whichever occurs first.

Time limits to commence, complete or review this approval, apply only to this specific application. A property may have several approved applications on it with each having its own expiration date. **It is the applicant's responsibility to keep the application current.**

CONDITIONS OF APPROVAL -

Current Planning

- **Resolution of Intent to complete in 4 years;**
- **Minimum 5 foot setback for residential units and garages from drive aisles;**
- **In the townhome development, provide a minimum of 2 pedestrian access points on Warbonnet Way, 3 pedestrian access points to Agate Avenue west of Miller Lane, and 2 pedestrian access points to Agate Avenue east of Miller Lane;**
- **Enter into a standard development agreement prior to any permits or subdivision mapping in order to provide fair-share contribution toward public infrastructure necessary to provide service because of the lack of necessary public services in the area;**
- **Provide buyers with a noise and odor disclosure related to agriculture uses (horses) in the area;**
- **Certificate of Occupancy and/or business license shall not be issued without final zoning inspection.**
- **Applicant is advised that a new application for a nonconforming zone boundary amendment may be required in the event the building program and/or conditions of the subject application are proposed to be modified in the future; a substantial change in circumstances or regulations may warrant denial or added conditions to an extension of time; and that the extension of time may be denied if the project has not commenced or there has been no substantial work towards completion within the time specified.**

BOARD OF COUNTY COMMISSIONERS

MARILYN KIRKPATRICK, Chair • JAMES B. GIBSON, Vice Chair
MICHAEL NAFT • JUSTIN C. JONES • TUCK SEGERBLOM • ROSS MILLER • WILLIAM MCCURDY II
YOLANDA T. KING, County Manager



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Nancy A. Amundsen, Director

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BOARD OF COUNTY COMMISSIONERS

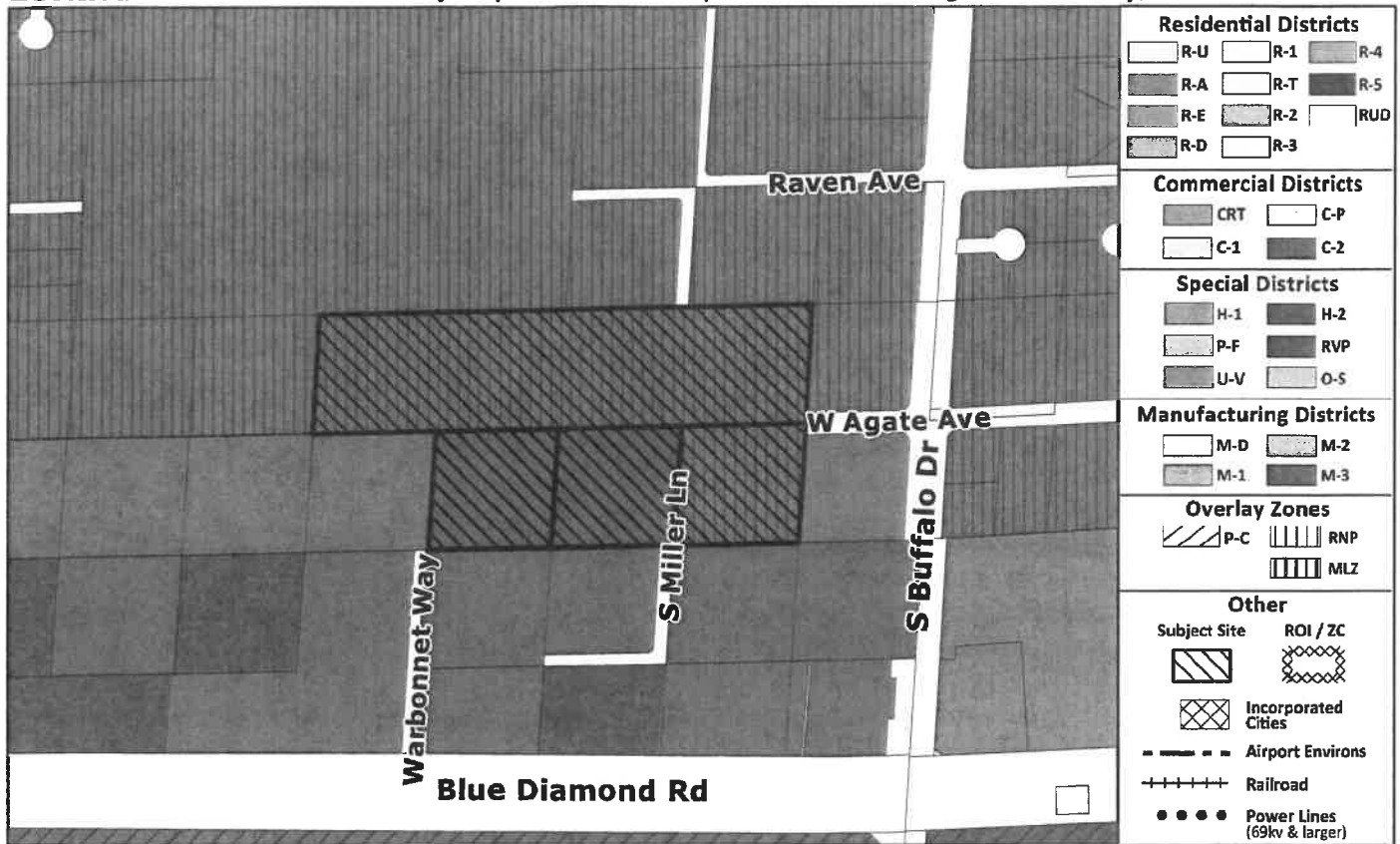
MARILYN KIRKPATRICK, Chair • JAMES B. GIBSON, Vice Chair
MICHAEL NAFT • JUSTIN C. JONES • TUCK SEGERBLOM • ROSS MILLER • WILLIAM MCCURDY II
YOLANDA T. KING, County Manager

Commission Agenda Map

NZC-20-0524

Clark County Department of Comprehensive Planning, Clark County, Nevada

ZONING



PLANNED LAND USE



This information is for display purposes only. No liability is assumed as to the accuracy of the data delineated hereon.

Subject Parcel(s)

17621601005

17621601022

17621601023

See complete list on file



0 125 250 500 Feet
Map Created on 11/24/2020

